IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 580 of 2005

Date of decision : 3.8.2006

Nirma Ram **…Appellant.**

Versus

Sita Ram and others **…Respondents.**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?[1]

For the appellant: Mr. V.K. Verma, Advocate.

For respondents : Mr. G.D. Verma, Senior Advocate, with
Mr. B.C. Verma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. A suit was filed by the appellant / plaintiff seeking permanent prohibitory injunction, restraining Ishwari Dutt, defendant (now deceased), from causing interference in his possession over certain property, which he (the plaintiff) claimed to be owned and possessed by him. The suit was dismissed by the trial Court with the finding that the plaintiff was not proved to be the owner in possession. He went in appeal to the Court of the learned District Judge, challenging the aforesaid finding and the decree of

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Whether reporters of Local Papers may be allowed to see the Judgment?

dismissal of suit. He moved an application, under Order 6 Rule 17 of the Code of Civil Procedure, to the first appellate Court, seeking leave of the Court to amend the plaint so as to explain therein how he acquired title to the suit property, because the trial Court in its judgment had given the finding that the appellant / plaintiff had failed to establish his title to the suit land. It appears that that application was opposed by the defendant. The learned District Judge partly heard the arguments on the application on 20.4.2005 and adjourned the matter for hearing the arguments of the defendant to a future date. It appears that thereafter arguments from the side of the defendant were not heard on the application and the main appeal was finally heard and dismissed on 26.7.2005. On the same day, the following order was passed by the learned District Judge on the application for amendment:-

> "Since the main appeal has been disposed of, this application becomes infructuous and dismissed as such (sic). Be tagged with the main appeal file."

3. Now, once the appeal had been dismissed and finally disposed of by the learned District Judge, he ceased to exercise the jurisdiction in the matter, he having become functus officio and thereafter he could not have passed any order on the application, under Order 6 Rule 17 of the Code of Civil Procedure. As a matter of fact, when he had started hearing arguments on the application independent of the appeal, per *zimini* order dated 20.4.2005, he should have disposed of the application by a speaking order on merits and preferably by a separate order. He could have also disposed of the application simultaneously with the disposal of the appeal by giving reasons in support of his decision. He neither decided

the application before the disposal of the appeal nor simultaneously with the appeal, but dismissed it after the disposal of the appeal, by strange reasoning, rather a reasoning unknown to the law and the normal practice followed by the Courts in such matters, that the application had become infructuous on account of dismissal of the appeal. The order is not only illegal but also without jurisdiction. The appeal could not have been disposed of without disposing of the aforesaid application first or at-least simultaneously with the disposal of the appeal. Therefore, the appeal is accepted, the impugned judgment and decree of the first appellate Court are set aside and the case is remanded to the first appellate Court with the direction to dispose of the application, under Order 6 Rules 17 of the Code of Civil Procedure, by a speaking order in accordance with law and then to hear and decide the appeal afresh. The parties, through their counsel, are directed to appear before the first appellate Court on 30.8.2006.

August 3, 2006 (BC) **(Surjit Singh)**
Judge